

UNITED STATES
v.
W. D. HONEYCUTT ET AL.

IBLA 74-124

Decided March 28, 1974

Appeal from decision (OR 10939) of Oregon State Office, Bureau of Land Management, holding mining claim null and void.

Affirmed.

Contests and Protests: Generally--Mining Claims: Contests--Rules of
Practice: Government Contests

Where a government contest complaint against a mining claim contains charges which, if proved, would render the claim invalid, and the contestees fail to file an answer to the complaint in accordance with Departmental regulations, the allegations of the complaint will be taken as admitted by the contestees and the claim is properly declared null and void.

APPEARANCES: W. D. Honeycutt, pro se, and Gwendolyn Honeycutt, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

W. D. Honeycutt and Gwendolyn Honeycutt have appealed from a decision of the Oregon State Office, Bureau of Land Management, dated September 20, 1973, which declared the Burnt Flats placer mining claim to be null and void.

The complaint was served on contestees charging, inter alia, that a valid mineral discovery did not exist within the limits of the claim, and that the land embraced within the limits of the claim was nonmineral in character.

The State Office decision states that contestees failed to file timely answers to the complaint and the claim therefore was declared null and void. This action was taken without a hearing pursuant to 43 CFR 4.450-7(a) which provides: "If an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the Manager will decide the case without a hearing." Under 43 CFR 4.450-6 contestees were required to file their answer to the complaint "[w]ithin 30 days after service of the complaint * * * in the office where the contest is pending * * *."

The complaint was served on W. D. Honeycutt on or about July 16, 1973, and on Gwendolyn Honeycutt on August 15, 1973. No answer was filed. Although appellants assert in their appeal that the "decision that there is no mineral content on the * * * claims is wrong," they also indicate there has been no discovery and offer no explanation showing why they did not answer timely.

The contest complaint recited in part as follows:

NOTICE

This complaint is filed in the Oregon State Office Land Office, Bureau of Land Management, Room ___, 729 N.E. Oregon Street, (P.O. Box 2965), Portland, Oregon 97208, and any papers pertaining thereto shall be sent to such office for service on the contestant.

Unless contestee(s) (file) an answer to the complaint in such office within thirty (30) days after service of this notice and complaint, the allegations of the complaint will be taken as admitted and the case will be decided without a hearing. Any answer should be filed in accordance with Title 43, Code of Federal Regulations, Part 4.450-6 a copy of which is attached. (36 F.R. 73, Part II, Publ. 4-15-71)
[Italics in original]

Dated this 13 day of July, 1973

Encl. 36 F.R. 73, Part II UNITED STATES OF AMERICA

By R. B. Herstine
Chief, Division of Technical Services

Thus, appellants were afforded adequate notice of the result which follows a failure to file a timely response to the contest complaint.

Where a government contest complaint against mining claims contains charges which, if proved, would render the claims invalid, and the contestee fails to file a timely answer to the complaint in accordance with Departmental regulations, the allegations of the complaint will be taken as admitted by the contestee and the claims are properly declared null and void. United States v. Smith, 67 I.D. 311 (1960). This rule was recently reiterated in United States v. Smith, 14 IBLA 309, 311 (1974), citing United States v. Sainberg, 5 IBLA 270 (1972), aff'd, Civil No. 72-217 (D. Ariz. Sept. 10, 1973).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

